

When a construction contractor permanently affixes tangible personal property to real property, the contractor is deemed the end user of that tangible personal property. As the end user, the contractor incurs Use Tax on the cost price of that tangible personal property. See 86 Ill. Adm. Code 130.1940 and 86 Ill. Adm. Code 130.2075. (This is a GIL.)

October 26, 2007

Dear Xxxxx:

This letter is in response to your letter dated July 2, 2007, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Recently I contracted a Home Improvement contractor to remodel my kitchen. I purchased my own appliances and they provided custom cabinetry, counter tops, miscellaneous plumbing and electrical material and, of course, labor.

I have received a final bill that includes \$1,600.00 in Sales Tax.

Having worked for HVAC and Electrical Contractors, where we were considered the end user of installed material, I am wondering if this charge for sales tax is an option.

I know that the cabinets were made by the Amish and possibly were brought in from Indiana. That is the only additional information available to me.

I thank you for your time and any guidance you can provide with this limited information.

DEPARTMENT'S RESPONSE:

If a person or business is contractually required to purchase tangible personal property for incorporation into real estate, then that person or business would be acting as a construction contractor. You are correct that construction contractors in Illinois are deemed to be the end users of

tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. See 86 Ill. Adm. Code 130.1940 and 86 Ill. Adm. Code 130.2075. Even persons from other states who act as construction contractors in Illinois by permanently affixing tangible personal property to real estate owe Illinois Use Tax on the cost price of the tangible personal property affixed to that real estate.

It is important to note that since construction contractors are the end users of the materials that they permanently affix to real estate, their customers incur no Use Tax liability and the construction contractors have no legal authority to collect the Use Tax from their customers. However, many construction contractors pass on the amount of their Use Tax liabilities to customers in the form of higher prices or by including provisions in their contracts that require customers to "reimburse" the construction contractor for his or her tax liability. Please note that this reimbursement cannot be billed to a customer as "sales tax," but can be listed on a bill as a reimbursement of tax. The choice of whether a construction contractor requires a tax reimbursement from the customer or merely raises his or her price is a business decision on the construction contractor's part.

You may also want to review some of the sales tax letter rulings we have on the Department's website listed below regarding construction contractors.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Terry D. Charlton
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TDC:msk